

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Qwest

Petition for Limited Modification of LATA

Boundary to Provide Expanded Local

Calling Service (ELCS)

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File No. NSD-L-01-154

MEMORANDUM OPINION AND ORDER

Adopted: February 11, 2002

Released: February 13, 2002

By the Acting Chief, Network Services Division, Common Carrier Bureau:

I. INTRODUCTION

1. On August 31, 2001, Qwest Corporation (Qwest), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ filed a petition to provide one-way, non-optional, expanded local calling service (ELCS) between various exchanges in Oregon.² Qwest's petition requests limited modification of a local access and transport area (LATA) boundary.³ The petition was placed on public notice,⁴ and no comments were filed. For the reasons stated below, we grant Qwest's request.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers. IntraLATA ELCS routes can be ordered by the state commission.⁵ For interLATA routes, prior to the

¹ See 47 U.S.C. § 153(25).

² Qwest seeks permission to transport calls from its Newport exchange to Sprint/United's Lincoln City exchange. Qwest states that there will be no change in the current service offerings available to Newport customers. The only change is that Newport customers will have a larger calling area.

³ Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than "one metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree"; or established or modified by a BOC after such date of enactment and approved by the Commission.

⁴ See Public Notice, "Comment Sought on Qwest Request for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service Between its Newport Exchange and Sprint/United's Lincoln City Exchange in Oregon," rel. Dec. 6, 2001.

⁵ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at

Telecommunications Act of 1996 (1996 Act),⁶ the Bell Operating Companies (BOCs) were required to secure state approval and then obtain a waiver from the United States District Court for the District of Columbia (District Court).⁷ In the years between the Consent Decree⁸ and the 1996 Act, the District Court received more than one hundred requests for Consent Decree waivers to permit new interLATA ELCS routes.⁹ Because of the large number of requests involved and because most of the requests were non-controversial, the District Court developed a streamlined process for handling such requests.¹⁰

3. Under the streamlined process developed by the District Court, the BOC submitted its waiver request to the Department of Justice (Department). The Department reviewed and then submitted the request, along with the Department's recommendation, to the District Court. In evaluating ELCS requests, the Department and the District Court considered the number of customers or access lines involved¹¹ as well as whether a sufficiently strong community of interest between the exchanges justified granting a waiver of the Consent Decree.¹² A community of interest could be demonstrated by such evidence as: (1) poll results showing that customers in the affected exchange were willing to pay higher rates to be included in an expanded local calling area;¹³ (2) usage data demonstrating a high level of calling between the exchanges; and (3) narrative statements describing how the two exchanges were part of one community and how the lack of local calling between the exchanges caused problems for community residents.¹⁴ In addition, the Department and the District Court gave deference to the state's community of interest finding. The

which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷ *United States v. Western Electric*, 569 F. Supp. at 995.

⁸ The Consent Decree required AT&T to divest its ownership of the BOCs. *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

⁹ Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, *Memorandum Opinion and Order*, 12 FCC Rcd 10646, 10648 (*July 1997 Order*).

¹⁰ *See United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Feb. 6, 1984); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Mar. 15, 1984).

¹¹ *See United States v. Western Electric Company, Inc.*, No. 82-0192, slip op. at 3 n.8 (D.D.C. July 19, 1984) (*July 1984 Order*).

¹² *See, e.g., United States v. Western Electric Company, Inc.*, No. 82-0192 slip op. at 2, 3 n.3 (D.D.C. Jan. 31, 1985) (*Jan. 1985 Order*); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Dec. 3, 1993); *United States v. Western Electric Company, Inc.*, No. 82-0192 (D.D.C. Dec. 17, 1993).

¹³ *See July 1984 Order* at 2 n.5.

¹⁴ *See Jan. 1985 Order* at 2-3 & n.3.

District Court also considered the competitive effects of granting a proposed ELCS waiver.¹⁵

4. Matters previously subject to the Consent Decree are now governed by the Act.¹⁶ Under section 3(25)(B) of the Act, BOCs may modify LATA boundaries, if such modifications are approved by the Commission.¹⁷ On July 15, 1997, the Commission released a decision granting 23 requests for limited boundary modification to permit ELCS.¹⁸ Although calls between the ELCS exchanges would now be treated as intraLATA, each ELCS exchange would remain assigned to the same LATA for purposes of classifying all other calls.¹⁹ The Commission stated that it would grant requests for such limited modifications only where a petitioning BOC showed that the ELCS was a flat-rated, non-optional service, a significant community of interest existed among the affected exchanges, and grant of the requested waiver would not have any anticompetitive effects.²⁰ The Commission stated further that a carrier would be deemed to have made a prima facie case supporting grant of the proposed modification if the ELCS petition: (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rated, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results, usage data, and descriptions of the communities involved; and (5) involves a limited number of customers or access lines.²¹

¹⁵ See *July 1984 Order* at 3; *Jan. 1985 Order* at 2-3; *United States v. Western Electric Company, Inc.*, No. 82-0192, slip op. at 2 (D.D.C. May 18, 1993) (*May 1993 Order*). The District Court granted waivers for more than one hundred flat-rated, non-optional ELCS plans that allow the provision of traditional local telephone service between nearby exchanges. See, e.g., *Western Electric*, 569 F. Supp. at 1002 n.54; *July 1984 Order* at 3; *January 1985 Order* at 4. Under such plans, subscribers pay no extra charge for calls beyond their established monthly service charge (the plan involves a flat-rated charge), and all subscribers in the exchange are included in the plan (the plan is non-optional).

¹⁶ Section 601(a)(1) of the 1996 Act states that “[a]ny conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and obligations imposed by such Consent Decree.” On April 11, 1996, the D.C. District Court issued an order terminating the AT&T Consent Decree and dismissing all pending motions under the Consent Decree as moot, effective February 8, 1996. See *United States v. Western Electric Company, Inc.*, No. 82-0192, 1996 WL 255904 (D.D.C. Apr. 11, 1996).

¹⁷ See 47 U.S.C. § 153(25)(B).

¹⁸ *July 1997 Order*, 12 FCC Rcd at 10646.

¹⁹ If an exchange were assigned to another LATA for all purposes, any existing local calling routes between that exchange and the original LATA would be lost because such traffic would now be interLATA and could no longer be carried by the BOC. Instead, the traffic would generally be carried by an interexchange carrier charging long distance toll rates.

²⁰ *July 1997 Order*, 12 FCC Rcd at 10649-50.

²¹ *Id.* at 10659. The Commission also delegated authority to act on petitions to modify LATA boundaries to the Common Carrier Bureau. *Id.* at para 10657-58. On August 6, 1997, the Commission released a decision granting requests to modify LATA boundaries to permit three independent telephone company (ITC) exchanges in Texas to change LATA association for purposes of improving service to subscribers. The Commission stated that a carrier will be deemed to have made a prima facie case supporting grant of a proposed association change if the

III. DISCUSSION

5. The petition proposes to establish one-way, non-optional ELCS, and is accompanied by: (1) a statement that only traditional local service is proposed and that the petition would not change the existing service offerings available to Qwest customers; (2) an order issued by the Oregon Public Utility Commission indicating that the commission found a sufficient community of interest to warrant such service; (3) a statement that a community of interest exists between the respective exchanges;²² (4) a statement of the number of access lines involved;²³ and (5) a statement that no rate increase will result. The petition also states that, on average, 4.33 toll calls per access line per month are placed from Newport to Lincoln City; and that over a six month period, 31.6 percent of Newport customers made at least two calls to Lincoln City. The brief description of the community of interest reveals that both communities share a school district and community college; that residents of both Newport and Lincoln City work in each other's community; and that specialized medical care exists in Lincoln City while county and state government services are located in Newport.

6. We believe that the small number of access lines and the small volume of traffic involved for the proposed ELCS areas in this petition, plus the fact that the type of service to be offered is one-way, non-optional local service, makes it is highly unlikely that provision of ELCS service would reduce Qwest's motivation to open its own market to competition. We conclude, therefore, that the information in the petition satisfies the criteria established in the *July 1997 Order*. Accordingly, because of the limited amount of traffic and the type of service involved, the Division finds that the proposed LATA modification will not have a significant anticompetitive effect on the interexchange market, and we approve Qwest's petition for a limited LATA modification to provide one-way, non-optional ELCS.

7. Granting Qwest's petition serves the public interest by permitting a minor LATA modification where such modification is necessary to meet the needs of local subscribers and will not have any significant effect on competition. Accordingly, the LATA is modified solely for the limited purpose of allowing Qwest to provide one-way, non-optional local calling service between the specific exchanges or geographic areas identified in the request. The LATA is not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, one-way, non-optional ELCS between the specified exchanges will be treated as intraLATA, and the provisions of the Act governing intraLATA service will apply.²⁴ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA

petition: (1) states that the association change is necessary because of planned upgrades to the ITC's network or service that will require routing traffic through a different BOC LATA; (2) involves a limited number of access lines; and (3) includes a statement from the affected BOC(s) requesting a LATA modification, pursuant to section 3(25) of the Act, to permit the change in association. Petitions for LATA Association Changes by Independent Telephone Companies, *Memorandum Opinion and Order*, 12 FCC Rcd 11769 (1977) (*August 1997 Order*).

²² No poll was taken. Approximately 40 people, however, appeared at a hearing to express their support for the expanded calling area.

²³ Newport has 8,653 access lines. Lincoln City has 11,271 access lines.

²⁴ The BOC may provide ELCS service without meeting the section 271 requirements, *see* 47 U.S.C. § 271(a), and a separate affiliate is not required, *see* 47 U.S.C. § 272(a)(2)(B).

service will apply.

VI. CONCLUSION AND ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of Qwest Corporation for a LATA modification for the limited purpose of providing one-way, non-optional ELCS at specific locations, identified in File No. NSD-L-01-154, IS APPROVED. The LATA boundary is modified solely for the purpose of providing two-way, flat-rated, non-optional ELCS between points in the specific exchanges or geographic areas indicated in the request. The LATA boundary for all other services shall remain unchanged.

9. IT IS FURTHER ORDERED that pursuant to section 416(a) of the Act, 47 U.S.C. § 416(a), the Secretary SHALL SERVE a copy of this order upon the petitioner, Qwest Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Diane Griffin Harmon
Acting Chief, Network Services Division
Common Carrier Bureau